



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
PEDRO A. DONALDSON,)	
)	
Complainant,)	
)	Charge No.: 2001CH1963
and)	EEOC No.: N/A
)	ALS No.: 11699
SLS MANAGEMENT,)	
)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On March 16, 2001, Complainant, Pedro A. Donaldson, filed a charge of discrimination with the Illinois Department of Human Rights (IDHR). That charge alleged that Respondent, SLS Management Company, Inc., discriminated against Complainant on the basis of his race by subjecting him to unequal terms and conditions of tenancy.

Respondent failed to appear for the IDHR's scheduled fact finding conference. As a result, the IDHR issued a Notice of Default against Respondent and filed a Petition for Hearing to Determine Complainant's Damages with the Illinois Human Rights Commission. The Commission granted the IDHR's petition, and the requested hearing on damages was held on December 4, 2002.

FINDINGS OF FACT

The following facts were derived from the record file in

this matter and from the transcript of the hearing held on December 4, 2002.

1. Complainant, Pedro A. Donaldson, represented himself, *pro se*, in this action.

2. On August 22, 2002, Respondent's counsel mailed a set of interrogatories to Complainant.

3. Complainant filed a written motion to strike Respondent's interrogatories. That motion was five typewritten pages in length, and it included several citations to legal authority, including case law. Complainant properly served his motion on Respondent and set up the motion to be heard by the administrative law judge.

4. On October 1, 2002, Complainant appeared and argued his motion. The motion was denied. Also on October 1, this matter was set for hearing on December 4, 2002. Complainant agreed to the December 4 hearing date.

5. On November 4, 2002, Respondent filed its Motion to Compel and/or For Protective Order. That motion was served upon Complainant by mail.

6. Complainant did not appear for the hearing on Respondent's motion to compel. The motion was granted. The order entered that day required Complainant to answer Respondent's interrogatories by the close of business on December 2, 2002. The order further provided that, if Complainant failed to answer the interrogatories, he would be barred from

introducing evidence responsive to those interrogatories. A copy of that order was mailed to Complainant by Respondent's counsel.

7. Complainant did not answer Respondent's interrogatories.

8. At the outset of the December 4 hearing, Complainant made an oral motion for a continuance. He stated that he wanted time to retain an attorney and to conduct discovery, including possible depositions.

9. Complainant did not file any motion to continue the December 4 hearing date. Furthermore, he gave Respondent no advance notice of his intentions.

10. Respondent objected to Complainant's request for a continuance. Respondent's counsel reported that he had spent time preparing for the hearing. In addition, Respondent had sent a witness to testify on its behalf.

11. Complainant's motion for continuance was denied.

12. Complainant refused to proceed to hearing in the absence of a continuance.

CONCLUSIONS OF LAW

1. A continuance of the damages hearing would have unreasonably delayed the proceedings in this matter.

2. Complainant failed to prove that he is entitled to damages in this matter.

DISCUSSION

On October 1, 2002, this matter was set for hearing on

December 4, 2002. Complainant was present when the hearing date was selected and he agreed to that date. Despite that agreement, on December 4, Complainant appeared and orally requested a continuance. Respondent objected to Complainant's motion. The motion for a continuance was denied.

Under section 5300.530 of the Commission's procedural rules, "[r]equests for continuance shall be made in writing to the Administrative Law Judge sufficiently in advance of a scheduled hearing to permit reasonable notice to all parties." Complainant failed to comply with that rule, in that his request was neither in writing nor in advance of the hearing.

Moreover, Complainant failed to establish good cause for his request. He stated that he wanted time to get an attorney and to take discovery. Had those requests been made at an earlier stage in the litigation, they unquestionably would have justified a continuance. On the morning of the scheduled hearing, though, those requests were untimely.

Complainant had been without an attorney throughout this action. Despite being unrepresented, he agreed to the hearing date. If he felt he could not proceed without an attorney, he should not have agreed to a specific hearing date.

In addition, there is some irony in his request for discovery. After Respondent served him with interrogatories, Complainant filed a written motion to strike them. Complainant demonstrated a fair degree of legal sophistication in that

motion. It was five typewritten pages in length, and it included several citations to legal authority, including case law. Complainant properly served his motion on Respondent and set up the motion to be heard by the administrative law judge.

Although his motion to strike them was denied, Complainant never responded to Respondent's interrogatories. Respondent brought a motion to compel, but Complainant did not appear for the motion. The entered order required Complainant to answer Respondent's interrogatories by the close of business on December 2, 2002. The order further provided that, if Complainant failed to answer the interrogatories, he would be barred from introducing evidence responsive to those interrogatories. A copy of that order was mailed to Complainant by Respondent's counsel, but Complainant did not comply.

In the absence of a timely request and good cause for the request, any continuance would have unreasonably delayed the proceedings in this matter. As a result, it was appropriate to deny Complainant's motion.

It is true that Complainant was acting *pro se* in this matter, but that should have no effect on this decision. A *pro se* litigant is held to the standard of an attorney. ***First Illinois Bank & Trust v. Galuska***, 155 Ill. App. 3d 86, 627 N.E.2d 325 (1st Dist. 1993). Clearly, there is no injustice in requiring Complainant to comply with the Commission's rules.

Complainant refused to go forward in the absence of a

continuance. As a result, there is no evidence in the record to establish that Complainant has been injured in any way. In the absence of such evidence, there is no way to calculate an appropriate measure of damages. As a result, no damages are recommended.

RECOMMENDATION

Based upon the foregoing, although an order of default was entered against Respondent, Complainant failed to prove that he was entitled to any damages. Accordingly, it is recommended that the earlier default order stand but that Complainant not be awarded any damages.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: February 13, 2003